

CITY COUNCIL PROCEEDINGS

December 7, 2004

MINUTES OF THE MEETING OF THE CITY COUNCIL

Wichita, Kansas, December 7, 2004

Tuesday, 9:06 A.M.

The City Council met in regular session with Mayor Mayans in the Chair. Council Members Brewer, Fearey, Gray, Lambke, Martz, Schlapp; present.

George Kolb, City Manager; Gary Rebenstorf, Director of Law; Karen Sublett, City Clerk; present.

Ashok Aurora of the Hindu Faith, gave the invocation.

The pledge of allegiance to the flag was participated in by the Council Members, staff, and guests.

The Minutes of the November 23, 2004 Meeting were approved 7 to 0.

AWARDS AND PROCLAMATIONS:

KEYS TO THE CITY PRESENTING KEYS TO THE CITY: LYNETTE WOODARD AND BARRY SANDERS.

Mayor Mayans presented Lynette Woodward and Barry Sanders with the Keys to the City. Barry Sanders could not be present for the presentation.

RECOGNITION RECOGNITION: KANSAS CITY PUBLIC IMPROVEMENT AWARDS, COWSKIN CREEK WATER QUALITY RECLAMATION FACILITY.

Mayor Mayans recognized Dave Warren and team with the Kansas City Public Improvement Award for the Cowskin Creek Water Quality Reclamation Facility and presented him with a plaque.

CONSENT AGENDA

Motion-- Mayans moved that the Consent Agenda be approved as consensus Items. Motion carried
--carried 7 to 0.

BOARD OF BIDS REPORT OF THE BOARD OF BIDS AND CONTRACTS DATED DECEMBER 6, 2004.

Bids were opened December 3, 2004, pursuant to advertisements published on:

PUBLIC WORKS DEPARTMENT/ENGINEERING DIVISION: Sewers, Paving and Water Mains as per specifications.

2004 wheelchair ramp & sidewalk, Phase 3 (Arterial Sidewalk) - north of 47th Street South, east of Broadway. (472-83966/706879/204345) Traffic to be maintained during construction using flagpersons and barricades. (Districts I,II,III)

Bryant & Bryant Construction - \$43,300.00 (Engineer's estimate)

2004 sanitary sewer reconstruction Phase 7 - manholes in 29th Street North from St. Francis to Ohio. (468-83843/620408/664528) Traffic to be maintained during construction using flagpersons and barricades. (District VI)

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 232

WB Carter Construction - \$138,231.00

Lateral 33, Main 1 Westlink Interceptor Sewer to serve Evergreen Addition - north of Maple, east of Tyler. (468-83804/744061/480749) Traffic to be maintained during construction using flagpersons and barricades. (District V)

Dondlinger & Sons – \$66,561.00

2005 utility cut repair of streets, driveways and sidewalks - north of 71st Street South, east of 167th Street West. (472-84127/132035/620398/_/664518) Traffic to be maintained during construction using flagpersons and barricades. (Districts I, II, III, IV, V, VI)

Cornejo & Sons Construction - \$1,717,800.00

Enhanced maintenance asphalt mill & overlay - north of 31st Street South, east of Broadway. (472-84129/706648/405218) Traffic to be maintained during construction using flagpersons and barricades. (Districts I, III)

Kansas Paving Company - \$365,991.98

2004 contract maintenance preparatory curb & gutter repairs - north of 55th Street South, east of 135th Street West. (472-83928/132716/) Traffic to be maintained during construction using flagpersons and barricades. (Districts I, II, III, IV, V, VI)

Bryant & Bryant Construction - \$200,000.00 (Engineer's estimate)

Enhanced maintenance area concrete repairs - north of 33rd Street South, east of Meridian. (472-84130/706648/405218) Traffic to be maintained during construction using flagpersons and barricades. (District IV)

McFadden Construction - \$61,856.80 (Engineer's estimate)

2004 contract maintenance asphalt crack and base repair - 21st Street North from Ridge Road to Maize Road. (472-84122/132716/) Traffic to be maintained during construction using flagpersons and barricades. (District V)

APAC – Kansas Inc*. - \$94,000.00 (Engineer's estimate)

*Bid Redirected

Motion--

Mayans moved that the contract(s) be awarded as outlined above, subject to check, same being the lowest and best bid within the Engineer's construction estimate, and the and the necessary signatures be authorized. Motion carried 7 to 0.

--carried

HOUSING SERVICES DEPARTMENT/PUBLIC HOUSING DIVISION: Replace fence/install concrete mow strip.

Caro Construction Co., Inc. - \$57,768.00 (Group 1 total net bid)

\$35,806.00 (Group 2 total net bid)

WATER & SEWER DEPARTMENT/SYSTEM PLANNING DIVISION: Replace 89 consumer lines in Planeview.

Wilks, Inc. dba Wilks Underground - \$71,200.00 (Group 1 total net bid)

PUBLIC WORKS DEPARTMENT/STORM WATER MANAGEMENT DIVISION: Drainage Improvements –9401 Sterling.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 233

W B Carter Construction Co. - \$11,231.00 (Group 1 total net bid)

PARK DEPARTMENT/RECREATION DIVISION: Game tables.

Sunflower Pool & Patio - \$3,179.00 (Group 1 total net bid)

\$7,000.00 (Group 2 total net bid)

BSN Sports - \$673.74 (Group 3 total net bid)

(Group 4 – Bids rejected)

S&S Worldwide - \$1,255.00 (Group 5 total net bid)

BSN Sports - \$1,705.48 (Group 6 total net bid)

Bill Fritz Sports Corp - \$1,347.00 (Group 7 total net bid)

S&S Worldwide - \$440.00 (Group 8 total net bid)

WATER & SEWER DEPARTMENT/SEWAGE TREATMENT DIVISION: 60 ultraviolet lamp assembly, P/N 441144-028 @\$216.00 each; and 18 ballasts, P/N 903374 @\$785.00 each.

Ray Lindsey Company* - \$27,090.00

*Purchase utilizing Sole Source of Supply Ordinance No. 35-856, Section 2.(b)

POLICE DEPARTMENT/FIELD SERVICES DIVISION: Standard security system for all City buildings.

Sandifer Engineering & Controls, Inc.* - \$27,040.34

*Purchase utilizing Sole Source of Supply - Ordinance No. 35-856
Section 2.64.020 (b)

Motion--
--carried

Mayans moved that the contract(s) be awarded as outlined above, same being the lowest and best bid, and the necessary signatures be authorized. Motion carried 7 to 0.

LICENSES

APPLICATION FOR LICENSE FOR ADULT ENTERTAINMENT ESTABLISHMENTS /SERVICES:

New Adult Entertainment

Ronald H. Groves Party Store 9601 East Kellogg

Motion--
--carried

Mayans moved that the license, subject to Staff review and approval, be approved. Motion carried 7 to 0.

APPLICATIONS FOR LICENSES TO RETAIL CEREAL MALT BEVERAGES:

<u>Renewal</u>	<u>2004</u>	<u>(Consumption on Premises)</u>
Guadalupe Cordova	Chico's Restaurant*	3949 West Douglas
Eugene J. Pelz	Siesta Steak & Lounge*	15130 West HWY 54
Haydee Raymundo	Tacos Raymundo*	1716 West 21st Street
<u>New Establishment</u>	<u>2004</u>	<u>(Consumption on Premises)</u>
Arturo Chavez	Mireles' Restaurant*	1859 North Waco

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 234

<u>New Operator</u>	<u>2004</u>	<u>(Consumption on Premises)</u>
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Miguel Reyes	Los Reyes Steakhouse Mexican /American Buffet & Bakery*	3804 South Seneca
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*General/Restaurant - 50% or more of gross receipts derived from sale of food.

Motion--
--carried

Mayans moved that the licenses, subject to Staff review and approval, be approved. Motion carried 7 to 0.

PRELIMINARY EST. PRELIMINARY ESTIMATES:

- a) 29th Street North, from Maize Road to Tyler (87N-0294-01/472-83863/706868/204334) The contractor will be allowed to close 29th Street to thru traffic. The contractor, once he closes 29th Street, will have fifteen (15) calendar weeks to reopen it. (District V) - \$3,301,850
- b) 2004 contract maintenance hot-in-place repaving, Phase 2 - 21st Street North from Ridge Road to Maize Road. (472-84121/132716/) Traffic to be maintained during construction using flagpersons and barricades. (District V) - \$450,000
- c) 2004 contract maintenance asphalt crack and base repair - 21st Street North from Ridge Road to Maize Road. (472-84122/132716/) Traffic to be maintained during construction using flagpersons and barricades. (District V) - \$94,000
- d) Water distribution system to serve Hawthorne 2nd & 3rd Additions - north of 21st Street North, east of 127th Street East. (448-89993/735220/470890) Does not affect existing traffic. (District II) - \$71,000
- e) Water distribution system to serve Hawthorne 3rd Addition - north of 21st Street North, east of 127th Street East. (448-89992/735223/470893) Does not affect existing traffic. (District II) - \$87,000
- f) Water distribution system to serve My House Addition - south of 55th Street South, west of Broadway. (448-89977/735216/470886) Does not affect existing traffic. (District IV) - \$49,000
- g) Lateral 499 Southwest Interceptor Sewer to serve My House Addition - south of 55th Street South, west of Broadway. (468-83835/744085/480773) Does not affect existing traffic. (District IV) - \$221,000
- h) Sidewalk along the west side of Reserve A to serve Reed's Cove Addition & Reed's Cove 2nd Addition - south of 21st Street North, east of 127th Street East. (472-84110/765909/490022) Does not affect existing traffic. (District II) - \$58,000
- i) Water distribution system, Phase 5 to serve Ridge Port Addition - north of 29th Street North, east of Ridge. (448-89826/735205/470875) Does not affect existing traffic. (District V) - \$14,000

Motion--carried

Mayans moved that the Preliminary Estimates be received and filed. Motion carried 7 to 0.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 235

STREET CLOSURES **CONSIDERATION OF STREET CLOSURES/USES: DOWNTOWN HOLIDAY LIGHTING- DECEMBER 7TH –5:30 TO 7:00 P.M.**

Agenda Report 04-1180

In accordance with the Special Events Procedure, event sponsors are to notify adjacent property owners and coordinate arrangements with Staff, subject to final approval by the City Council.

The following street closure requests have been submitted:

Downtown Holiday Lighting - December 7 – 5:30 to 7:00 pm

- § McLean, 1st/2nd to Douglas
- § 1st/2nd, Waco to McLean
- § Douglas, Mclean to CII Drive
- § Waco at Douglas, with local traffic on Waco

Police security is arranged to remove blockades as necessary to allow emergency vehicle access during entire designated time period

Inasmuch as possible, event sponsors are responsible for all costs associated with special events.

Motion--

Mayans moved that the request be approved subject to: (1) Event sponsors notifying every property and/or business adjoining any portion of the closed street; (2) Coordination of event arrangements with City Staff; (3) Hiring off-duty public safety officers as required by the Police Department; (4) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; (5) Submitting a Certificate of Insurance evidencing general liability insurance which covers the event and its related activities, including the naming of the City as an additional insured with respect to the event's use of the closed City streets. Motion carried 7 to 0.

--carried

2005 PLACMNT SERV. 2005 PROPERTY, LIABILITY AND EXCESS WORKER'S COMPENSATION INSURANCE PLACEMENT SERVICES. (Deferred November 23, 2004)

Agenda Report No. 04-1166A

The City Council directed Staff to receive competitive bids for the City of Wichita's 2005 property, liability and excess workman's compensation insurance placement services.

The Request for Proposal (RFP) was issued through the City's Purchasing system. The RFP requested the vendor to:

- § Provide multiple quotes for each classification of risk protection purchased,
- § Assist City Staff in understanding the nuances of each coverage suggested, the costs, the exclusions, limitations and similar details, and
- § Bring new information, legislation and new products and ideas for improvement to the City.

A summary of the Request for Proposal evaluation criteria is as follows:

1. The firm has demonstrated experience and expertise in the industry and experience with governmental operations.
2. The quality of professional Staff assigned and adequacy of resources.
3. The firm's demonstrable access to insurance markets relevant to the City's operations.
4. The firm's philosophy of coverage is articulated; such as, will coverage be based on the previous year's business and activities or will it address changes in risk prior to incidents and claims.
5. The firm's philosophy on claims handling, mechanisms for apprising clients of the status of claims and litigation.
6. The ability of the firm to provide services within the required timeframes.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 236

7. The efficacy and comprehensiveness of services offered relevant to the entire risk management program.

A Request For Proposal notice was published in the official newspaper on September 23, 2004, the RFP was placed on the City's e-Procurement web site and notices were mailed to 30 different firms across the United States. A total of five written proposals were received.

A 10 member Screening and Selection Committee was created to review the proposals. The Committee was comprised of representatives from: City Manager's Office; Department of Finance; Department of Law; Water and Sewer; Airport; Art Museum and Planning.

The Screening and Selection Committee reviewed all five written proposals and independently ranked each proposal based on the ranking criteria listed in the RFP. The top three firms were selected to make detailed presentations to the Screening and Selection Committee. The detailed presentations were held November 10, 2004. Following the detailed presentations, the Screening and Selection Committee independently ranked the presentations and proposals based on the ranking criteria listed in the RFP.

The Screening and Selection Committee recommends award of the contract to the firm of Marsh USA based on the firm's demonstrated experience and expertise in the industry and experience with governmental operations.

The contract would be for a not to exceed fee of \$45,000. Funds are budgeted in the Self Insurance Fund to pay for a consultant. The City will not pay any regular commissions, contingent commissions or overrides.

Motion--
--carried

Mayans moved that the contract be approved and that the necessary signatures be authorized. Motion carried 7 to 0.

WATER BOOSTER

WATER BOOSTER PUMP STATION FACILITY - WEST MAPLE. (DISTRICT V)

Agenda Report No. 04-1181

The 1999 Water Master Plan identified potential pressure problems in parts of the west Wichita water distribution system and growth areas in west Sedgwick County that were identified by the Metropolitan Area Planning Department (MAPD). Pressure complaints and accelerated growth in west Wichita have prompted the need to go forward with this project.

On April 8, 2003, City Council approved a Water Master Plan Update. The firm of Burns & McDonnell was selected as consultant engineers for this update. In the process of updating the water distribution water model and analyzing the water distribution system, which includes the latest growth predictions by MAPD, they recommended a new booster pump station facility. The facility will be located near the existing 24-inch water main in Maple between 135th Street West and 151st Street West.

Burns & McDonnell recommend that the pump station be in operation prior to peak water usage periods during summer 2005. To assure that the pump station is constructed and operational prior to next summer's peak water usage, Staff recommends that an engineer/contractor team be selected according to Administrative Regulation #7.

Estimated cost for the project is \$650,000. Funds are available in W-65, Unidentified Mains, and will be transferred to a new project, CIP W-910 (135th West and Maple Inline Booster Station). There will be no increase in the CIP budget. The facility will be funded from Water Utility cash reserves or future revenue bonds.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 237

Charter Ordinance 111 requires the City Council to approve the project as design/build before requests for proposals are sent.

Motion--
--carried

Mayans moved that the expenditures and project as a design/build be approved; the Resolution adopted; the CIP amended and the necessary signatures authorized. Motion carried 7 to 0.

RESOLUTION NO. 04-645

A Resolution of the City of Wichita, Kansas, declaring it necessary to construct, reconstruct, alter, repair, extend and enlarge the Water and Sewer Utility owned and operated by the City, and to issue Revenue Bonds in a total principal amount which shall not exceed \$650,000, exclusive of the cost of interest on borrowed money, for the purpose of paying certain costs thereof, and providing for the giving of notice of such intention in the manner required by law, presented. Mayans moved that the Resolution be adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans.

OCI PERMIT FEE

OFFICE OF CENTRAL INSPECTION BUILDING PERMIT FEE INCREASE.

Agenda Report No. 04-1182

OCI has been a self-sustaining Special Revenue Fund since 1984, and has received no money from the General Fund since that time. OCI is funded primarily through building construction permit fees, building plan review fees, and business licensing fees.

In 1995, the City Council adopted Resolution R-95-560. This Resolution set forth the intent of the Council with respect to OCI budget reserve levels, permit fee discounts or increases, and other matters pertaining to the continued operation of OCI as a Special Revenue Fund. A key component of Resolution R-95-560 was the City Council's stated intent to maintain the OCI operating budget cash reserve at an amount equal to between 3-4 months of the annual OCI expenditure budget. Per the Resolution, permit fees shall be discounted or increased to maintain this 3-4 month target reserve level.

Between February and December 2002, OCI provided a series of discounts to building permit fees (1985 fee tables adopted in Title 18 are the base level), with total reductions amounting to 45% of the previous fee levels. This was done in order to reduce the OCI cash operating reserve to an appropriate level. As of February 29, 2004, the operating reserve stood at 3.2 months of the 2004 annual OCI budget, and the 10% discount on the base building permit fees that was in effect at that time was removed.

Currently, the OCI operating reserve stands at 2.8 months of the 2004 approved OCI budget. In order to increase the operating reserve to a more appropriate reserve level over the next 6-9 months (3.5 months is the target), a 15% building permit fee increase is recommended, effective January 1, 2005.

The Wichita Area Builders Association "Industry Board" (as set forth in Resolution R-95-560) has recently reviewed the OCI fund status, as well as the Staff-proposed 15% building permit fee increase. On November 17, 2004, the Industry Board met with Staff and voted unanimously to support implementation of the 15% fee increase, effective January 1, 2005.

The 15% permit fee increase will be implemented on January 1, 2005.

Formal City Council approval of building permit fee adjustments is not required by Resolution R-95-560, however, because the "base" building permit fee schedule is codified in Title 18, the Law Department recommends that the City Council review fee adjustments.

Motion--
--carried

Mayans moved that the report on 15% OCI building permit fee increase be received and filed. Motion carried 7 to 0.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 238

SAFETY AWARD

SAFETY AWARD PROGRAM.

Agenda Report No. 04-1183

The City Safety Office serves primarily to reduce employee injuries and accidents, by providing the knowledge and equipment necessary to perform jobs as safely as possible. In addition to ensuring the health and welfare of employees, training that reduces employee injuries also serves to reduce City funded workers compensation costs. A component of the Safety Office program for several years has been the annual awarding of safety incentives. Incentives are a common practice and are widely believed to reduce workers compensation costs. In addition, they provide an important acknowledgment to Staff that efforts to prevent accidents are important and appreciated.

The City program also rewards those who have not had an at-fault vehicle or equipment accident in the past year. The awards are geared primarily to field Staff and those in other higher risk occupations (Police and Fire). In the past, safety awards have been in the \$10 –\$25 range for field Staff, with smaller amounts spent on the less hazardous city occupations. The Safety Office also performs ergonomical evaluations and recommends appropriate equipment to prevent injuries. This is often as simple as a keyboard wrist rest or a more appropriate chair.

To incentivize Staff to prevent future accidents and to reward those that were injury and accident-free in 2004, Staff is proposing an investment of approximately \$48,000 in safety awards. The proposed awards for field Staff include a choice of either a \$25 gift card or \$25 in recreational services from City facilities. For non-field Staff, an identification badge reel is proposed. In addition, Staff is proposing the investment of up to \$15,000 to replace aging or inadequate office equipment (primarily chairs), mostly for field Staff in the Police and Fire departments.

The proposed awards and office equipment should cost no more than \$63,000. Funding for safety awards is available and budgeted in the Adopted budget. Any replacement office equipment may require the budget transfer of savings from other areas in Self Insurance.

Motion--
--carried

Mayans moved that the safety award program and any necessary budget transfers be approved.
Motion carried 7 to 0.

PROPERTY ACQ.

ACQUISITION OF PORTIONS OF THE ABANDONED UNION PACIFIC RAIL CORRIDOR FOR THE MIDTOWN GREENWAY. (DISTRICT VI)

Agenda Report No. 04-1184

In 1999, the Union Pacific Railroad abandoned the rail corridor that runs from Central Avenue and Wichita Street to Broadway and 15th Street North. Through this abandonment, rights to the corridor reverted to the adjacent property owners on both sides. The City has reviewed the former corridor and decided that it could be utilized to develop a greenway/lineal park connecting Horace Mann, Irving and Park Schools and the bicycle path on Central. In April 2002, the City Council approved \$74,000 in CDBG funding to acquire portions of the abandoned Union Pacific corridor from Central to 15th Street from adjacent property owners.

Due to their size and configuration, the tracts being acquired are not developable by themselves. The majority of the tracts abut developed properties but lie outside the fenced, defined boundaries of the properties. The purchase price of similar tracts was reviewed to estimate market value. These amounts were offered to the adjacent property owners with several accepting the offers. The contracts represent five tracts with a total value of \$3,600.

A budget of \$3,700 is requested, consisting of \$3,600 for acquisition and \$100 for recording fees. The funding source is previously approved CDBG funds.

Motion--
--carried

Mayans moved that the Budget and Real Estate Purchase Contracts be approved and the necessary signatures authorized. Motion carried 7 to 0.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 239

**PROPERTY ACQ. ACQUISITION OF PART OF 4910 EAST CENTRAL: OLIVER TO WOODLAWN.
(DISTRICTS I AND II)**

Agenda Report No. 04-1185

On November 4, 2003 City Council approved a project to improve Central, between Oliver and Woodlawn. The improvement plans call for partial acquisitions of seven parcels. One of the required parcels is located at 4910 East Central. The acquisition requires a 737.5 square foot strip of land. The property has a tenant occupied retail building located on a 14,000 square foot site.

The property owner has agreed to accept \$15,565 for the acquisition, temporary easement, and loss of two parking spaces and relocation of his business sign. The building improvements will not be impacted by this acquisition.

The funding source for the City share of the project is General Obligation Bonds with Federal monies. A budget of \$16,400 is requested. This includes \$15,565 for the acquisition, and \$835 for closing costs and title insurance.

Motion--
--carried

Mayans moved that the Budget and Real Estate Purchase Contracts be approved and the necessary signatures authorized. Motion carried 7 to 0.

PROPERTY ACQ. ACQUISITION OF PART OF 4802 EAST CENTRAL FOR CENTRAL: OLIVER TO WOODLAWN. (DISTRICTS I AND II)

Agenda Report No. 04-1186

On November 4, 2003 City Council approved a project to improve Central, between Oliver and Woodlawn. The improvement plans call for partial acquisitions of seven parcels. One of the required parcels is located at 4802 East Central. The acquisition requires a 218.6 square foot strip of land. The property has a tenant occupied retail building located on an 18,730 square foot site.

The property acquisition and temporary easement were valued at \$1,355. The property owner has agreed to accept \$6,270 for the acquisition, temporary easement and the loss of two parking spaces. The building improvements will not be impacted by this acquisition.

The funding source for the City share of the project is General Obligation Bonds with Federal monies. A budget of \$7,000 is requested. This includes \$6,270 for the acquisition, and \$730 for closing costs and title insurance.

Motion--
--carried

Mayans moved that the Budget and Real Estate Purchase Contracts be approved and the necessary signatures authorized. Motion carried 7 to 0.

PROPERTY DISP. SALE OF SURPLUS PROPERTY LOCATED AT THE SOUTHWEST CORNER OF HILLSIDE AND 33RD STREET NORTH. (DISTRICT I)

Agenda Report No. 04-1187

An offer has been received for the City-owned parcel located at the southwest corner of Hillside and 33rd Street North. The property has 82,354.29 square feet and is currently undeveloped. The site is zoned Light Industrial. The property was immediately east of Public Work's Northeast Maintenance Substation. This tract has been declared surplus to the needs of the substation.

The property has been offered for sale since 1993. It was included in last years marketing program with a suggested minimum price of \$3.00 per square foot. The highest offer received during the marketing period was \$.91 per square foot. An offer of \$164,700 (\$2.00 per square foot) has been received. The buyer plans to relocate his motor coach company and lawn service to Wichita from El Dorado.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 240

The City will receive cash consideration from the sale of the property at closing. In addition, it will return to the tax rolls and the City will be relieved of maintenance costs.

Motion--
--carried

Mayans moved that the Real Estate Purchase Contracts be approved and the necessary signatures authorized. Motion carried 7 to 0.

PROPERTY DISP.

SALE OF SURPLUS PROPERTY LOCATED AT THE NORTHEAST CORNER OF SENECA AND MCCORMICK. (DISTRICT IV)

Agenda Report No. 04-1188

An offer has been received for the City-owned remnant located at the northeast corner of Seneca and McCormick. The property has 5,100 square feet and is currently undeveloped. The site is zoned Limited Commercial. The property was acquired for the widening and improvement of the Seneca/McCormick intersection. The improvements were removed and approximately two-thirds of the site was utilized for the project.

The property has been offered for sale since 1996. Due to its small size and irregular configuration, the site can only be utilized by an adjacent owner. An offer of \$4,000 has been received from the property owner to the east. The buyer plans to use the site for parking or possibly a garage to support his existing building.

The City will receive cash consideration from the sale of the property at closing. In addition, it will return to the tax rolls and the City will be relieved of maintenance costs.

Motion--
--carried

Mayans moved that the Real Estate Purchase Contracts be approved and the necessary signatures authorized. Motion carried 7 to 0.

ORDINANCE

SECOND READING ORDINANCE (FIRST READ NOVEMBER 23, 2004).

a) Acquisition by eminent domain of tracts required for runway approach protection at Mid-Continent Airport.

ORDINANCE NO. 46-410

An Ordinance providing for the acquisition by eminent domain of certain private property, easements and right-of-way-therein, for the purpose of preserving the runway approach protection zone for Mid-Continent Airport in the City of Wichita, Sedgwick County, Kansas; designating the lands required for such purposes and directing the City Attorney to file a petition in the District Court of Sedgwick County, Kansas, for acquisition of the lands and easements therein taken and providing for payment of the cost thereof, read for the second time. Mayans moved that the Ordinance be placed upon its passage and adopted. Motion carried 7 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Schlapp, Mayans.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 241

NEW BUSINESS

GENESIS HEALTH CLUBS

RECONSIDERATION OF LETTER OF INTENT FOR INDUSTRIAL REVENUE BONDS, GENESIS HEALTH CLUBS. (DISTRICTS V & VI)

Allen Bell

Economic Development Director reviewed the item.

(Schlapp left the bench.)

Agenda Report No. 04-1189

On July 13, 2004 the City Council approved the issuance of a one-year letter of intent for industrial revenue bonds ("IRBs") for Genesis Health Clubs ("Genesis") in an amount not to exceed \$11,850,000. Bond proceeds are to be used to finance the cost of acquiring, constructing and equipping two new health club facilities in west Wichita, one at 3725 W. 13th and one at the northwest corner of 29th Street North & Maize Road, and to expand its existing health club at 854 N. Socora. Genesis has committed to add 100 new employees to its Wichita workforce within ten years. The City Council also granted a 50% five-year tax exemption on bond-financed property, plus a second five-year exemption upon City Council review and approval.

On November 2, 2004, the City Council voted to deny a request for an IRB letter of intent and tax abatement from Fitness 2000 Health Clubs, for a project that is smaller but similar to that of Genesis.

On November 16, 2004, the City Council approved a revised Economic Development Incentive Policy that establishes new guidelines for recommending the approval of incentives, including IRBs and property tax abatements. Under the new policy, Staff would have recommended against approval of the Genesis letter of intent. In light of the new policy and the action to deny the Fitness 2000 letter of intent, several City Council Members have sought to have the Genesis IRB letter of intent reconsidered.

The Industrial Revenue Bond Policy and Business Incentive Policy were in effect at the time of the City Council's approval of the Genesis letter of intent. Under these policies, a service company (such as Genesis) could receive IRBs and property tax abatement, at the sole discretion of the City Council. The amount of property tax abatement, as a percentage, was determined by a formula that recognized the economic development value of exporting goods and services outside the local market area, which brings new wealth into the local economy. Under the former policy, a company that does not export any of its goods or services cannot receive more than a 50% property tax abatement. The City Council's action on the Genesis letter of intent conforms to this policy.

In spite of this policy, it had not been the recent practice of the City Council to approve property tax abatements for service businesses. Since 1998, only nine non-manufacturing companies have received property tax abatements. Of those, three are national corporate headquarters, two are in-bound call centers, one is a regional distribution center, one is an international pilot training business and one is a downtown hotel. All of these businesses clearly earn a majority of their income from activities or visitors from outside the Wichita area. Only the Eaton Place received a property tax abatement and does not directly bring new wealth into the economy.

Under the new policy, this emphasis on new wealth generation has been further expanded. Service businesses, distribution centers, corporate headquarters, transportation services, tourism facilities and medical services may receive economic development incentives only if a majority of the businesses' revenues results from transactions originating outside the Wichita area, or from visitors (or patients) from outside the area.

The estimated first year's taxes on Genesis' proposed \$11,850,000 expansion would be \$136,356, on real property improvements and \$27,388 on personal property, based on the 2003 mill levy. The tax exemption would be shared among the taxing entities as follows: City - \$45,976; County/State - \$43,687; and USD 259 - \$74,080.

The total tax abatement will be reduced by a \$22,000 per year payment-in-lieu-taxes.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 242

Purchases financed with industrial revenue bonds are generally exempt from state and local sales tax. Use of IRBs would save Genesis an estimated \$460,000 in sales tax, of which \$73,000 would be county sales tax.

The Department of Law has advised that there is no legal impediment to the City Council's reconsideration of its prior action to approve the Genesis letter of intent and property tax abatement. The City Council would have had to reconsider the property tax abatement in any case, since the statutorily required cost-benefit analysis failed to consider the impact of the project on the Maize school district, where one of the new facilities will be located.

Allen Bell

Director of Economic Development stated that there was a procedural error made at the time of the approval of the Genesis incentives. Stated that one of the facilities is located in the Maize School District, which is the facility at 29th and Maize Road and that state laws require that a notice be sent to the Maize School District and also to calculate the fiscal impact of the tax exemption on the Maize School District as well as the other jurisdictions. Stated that the 13th Street and Socora facilities are located in USD 259 and notice was sent to USD 259 and the cost benefit analysis conducted by WSU reflects the impact on USD 259 but not on the Maize School District. Stated that this procedural flaw would require the City Council to reconsider its approval of the property tax exemption. A public hearing will need to be held, notice published and a copy of the notice sent to the Maize School District; and ask the City Council to reaffirm its approval of the property tax exemption. Stated that depending on the action taken today, if the Council rescinds their approval of the property tax exemption, then Staff would not come back with any further action on this. But if Council decides to keep the property tax exemption in place, Staff will need to bring back to Council for a public hearing and reaffirmation of that approval at a later date.

Council Member Fearey Council Member Fearey asked what the Staff's recommendation was on the first agenda report.

Allen Bell

Director of Economic Development stated that Staff's recommendation was to approve a letter of intent for Industrial Revenue Bonds (IRBs) and determine the amount of property tax exemption if any to grant to Genesis. Explained that there was some indecision about whether to recommend the property tax abatement and that the issue of the IRBs was a separate matter. Stated that he felt that approval of the IRBs was appropriate but was not as sure about the property tax and felt that he should leave it up to the City Council to determine.

Mayor Mayans

Mayor Mayans asked how rare it is to rescind a letter of intent.

Allen Bell

Director of Economic Development stated that it would be a precedent.

Council Member Lambke

Council Member Lambke stated that this is not an issue that will break the bank as far as approving the letter of intent but may break the trust in City government and he is not supporting the issue of the revenue bonds but is supporting the Council's integrity as he sees it.

Council Member Martz

Council Member Martz stated that he was not aware of the sales tax abatement that came with this and whenever the Council has talked about IRBs in the past, they have only talked about property tax abatements. Asked if it is automatic to give a sales tax abatement when granting a property tax abatement.

Allen Bell

Director of Economic Development explained that it is not automatic and that state law allows the City to administratively file for sales tax exemption for the acquisition or purchases of property financed with IRBs. Stated that the City began many years ago to routinely process an application for sales tax exemption for IRB projects and it is forwarded to the Department of Revenue and they issue an exemption in response to the request. However, it does require the City to take that action. Stated that since this issue has arisen in connection with Genesis and that his current Staff practices have now changed and that they will not process those applications without Council authorization.

(Fearey momentarily absent.)

Mayor Mayans

Mayor Mayans inquired whether anyone wished to be heard.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 243

- Pamela Cutler Owner of Salon Knotty and Day Spa at Genesis on North Rock Road stated that Rodney Steven is the single most committed person in Wichita to health and fitness and that with four health clubs he has a history of success. Stated that the Council has already made a commitment to him and to Wichita and it does say something if the Council honors that.
- Rick Nutt Mr. Nutt resides at 1610 West 13th stated that he is glad to hear that the Council is concerned with backing up their commitment to Genesis.
- Cybil Strum Ms. Strum stated that she is glad that the Council is reconsidering this issue and originally was opposed to this because she felt that they should not get a tax break when homeowners do not get tax breaks.
- Larry Break Mr. Break resides at 1408 Mars stated that we do need health facilities that provide us with excellent health and exercise and Genesis is one of these places. Stated that Genesis is an excellent operation and thinks that the Council should reconsider this proposal even though it does use some of our tax money.
- Marilyn Parker Ms. Parker resides at 7027 Farmview Court and stated that she is a new member of Genesis and has been very impressed with their programs and expert supervision and thinks that the over 65 and 75 year old population is increasing every year. Stated that there is going to be a greater need for health clubs like Genesis to provide supervised, expert, physical fitness programs for this age group. Stated that there is economic value in senior citizens maintaining good health so that they can be assets instead of liabilities to our economy.
- Rodney Steven II Mr. Steven, President of Genesis Health Clubs stated that he is here to maintain the approval of the IRBs that Genesis was granted. Stated that last year while securing property for a new northwest location, he was introduced to the idea of the IRB. Stated that the IRB financing would allow for an enhanced and improved development that would be great for west Wichita and the community. Stated that it would increase the fitness options for Wichitans and fulfill the purpose of making a great investment in the community, which he understood was the purpose that IRBs were intended and not to mention the economic development benefits and jobs that come from the construction of these facilities and their aftermath, which in the future will add to the City's tax base. Stated that he then learned the details from his attorneys and was told that Genesis would meet policy for IRBs and he then met with the City's Economic Development Director and was told again that they met policy. Stated that he then met with all Council Members and the Mayor and only one Council Member voiced opposition. Stated that they submitted an application, Staff recommended approval and it was voted on and approved 5 to 1 and Genesis was then issued a letter of intent from the City. Stated that he was advised by the City's legal counsel that he could proceed with construction and therefore entered into many business contracts and commitments based upon the City's approved letter of intent. Asked what did he do that was wrong. Stated that in discussions with the City Manager, Mayor and each Council Member he was told that they did nothing wrong and companies have relied on the letter of intent and started construction after the letter of intent was issued. Stated that since receiving his letter of intent from the City he has spent months contracting with architects, engineers, designers and construction contractors and are heavy into construction at one of the locations and have spent or contracted to spend more than \$500,000 already at their west central location. Stated that he has also received his sales tax exemption certificate from the state and has been using that when paying their contractors. Stated that in the last six months they announced their new location at 29th and Maize Road. Stated that he is surprised that he has to be here today to fight not only for Genesis and its almost 300 employees and its future 100 employees and himself but for all those who have commitments pending with the City that now may be at risk. Stated that a letter of intent is defined on the City's website as a commitment and he is asking today that the Council keep their promise.
- Council Member Gray Council Member Gray stated that this has been a very difficult position for this Council and that they do their best with the information that they have at the time of their decisions. Stated that public opinion is very strong and in the issue of Genesis the public opinion came after the decision was already made and with that the Council revised their policy and their position, which affected Fitness 200's vote. Stated that the Council must remain true to their commitment and integrity and which it has already given to Genesis and that with that commitment they have already begun their project. Stated that this issue is bigger than Genesis and bigger than the City Council and with that he is honoring the decision that he previously made.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 244

- Council Member Fearey Council Member Fearey stated that she understands the commitment of a letter of intent but that the Council was not given correct information and the Council can only make decisions on the information that they have and were not given correct information about the Maize school district. Stated that they were not allowed an opportunity to weigh in on this issue and thinks that is a big issue regarding this matter. Stated that when Genesis came to the Council she felt that they met the policy on the IRBs and she will also probably stand behind the IRB part of this but regarding the tax abatement, she will judge that on the policy that is now in place.
- Council Member Brewer Council Member Brewer stated that this entire process has been educational for everyone and that through this process Mr. Steven has shown that he is passionate about what he is doing and about the health of individuals but there were several wrongs that were done through this entire process. Stated that he feels that there was an injustice that was done to Mr. Steven and that injustice being that he was led down a path that he should not have been led down. Stated that he feels that he was given information and directed as to where to go and he feels that was wrong. Stated that there was also additional politics that went on as to why these were approved or not approved and that was incorrect and should not have happened. Stated that these are things that the Council is privileged to that most of the public is not aware of. A decision was made and as the Council makes these decisions they must turn around and recognize that we do not live in a perfect environment and that we are human and that each and every one of us makes mistakes. Stated there needs to be a balance maintained with everyone and with every business and to give everyone a fair opportunity is very important. Stated that in doing this you have to make decisions but do you continue to make decisions that you may think are not the correct thing to do. No you stop it and correct it and if there is any way you can fix it you fix it. Stated that what the intent is today is to try and fix what actually happened and that there are things that have been put into place to assure that this will never happen again.
- Motion-- Mayans moved to reaffirm the support for the Genesis IRBs.
- Council Member Fearey Council Member Fearey stated that she would like to reiterate that she does not want to compound her mistake by another mistake and that is why she is going to support the IRB part of this because she feels if she backs down on that letter of commitment that she might be jeopardizing future economic development in Wichita and that is the last thing that she wants to do. Stated that she also would like to reiterate, especially to the citizens, that she would not be looking at the tax abatement the same way. The IRBs, except for the sales tax part, do not cost taxpayers money. The tax abatement is taking new money that would normally go into the City's pool of taxes and not putting it in there and that is where she will be making her next judgment when that comes back before the Council.
- Council Member Martz Council Member Martz asked if the Maize School District issue will come back at a later date and with that in mind he will also support this but reserves the right to have consideration on the tax abatements at that time.
- carried Motion carried 5 to 1, (Brewer-Nay, Schlapp-absent).

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 245

PLANNING AGENDA

Motion-- Mayans moved that the Planning Consent Agenda be approved as presented. Motion carried
--carried 6 to 0, (Schlapp absent).

CLARKDALE ADD. SUB2004-83-PLAT OF CLARKDALE FOURTH ADDITION, LOCATED NORTH OF 63RD STREET SOUTH AND ON THE EAST SIDE OF SENECA. (DISTRICT IV)

Agenda Report No. 04-1190

Staff Recommendation: Approve the plat.
MAPC Recommendation: Approve the plat. (9-0)

This replat, consisting of one lot on .94 acres, is located with Wichita's city limits. A zone change, (ZON 2002-73) from "GC" General Commercial District and "SF-5" Single-Family Residential District to "OW" Office Warehouse District has been approved.

Water services are available to serve the site. A Petition, 100% percent, and a Certificate of Petition have been submitted for the future extension of sanitary sewer services. The City Environmental Health Department has approved on-site sewer facilities. As requested by Traffic Engineering, a Cross-lot Access Agreement with the commercial property to the north has been submitted to allow access to the rear of the property.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within 30 days. Publication of the Ordinance should be withheld until the Plat is recorded with the Register of Deeds.

The Certificate of Petition and Cross-lot Access Agreement will be recorded with the Register of Deeds.

Motion-- Mayans moved that the documents and plat be approved; the necessary signatures be authorized; the
--carried Resolution be adopted, and the Ordinance placed on first reading. Motion carried 6 to 0, (Schlapp absent).

RESOLUTION NO. 04-646

Resolution of findings of advisability and Resolution authorizing construction of Lateral 504, Southwest Interceptor Sewer (north of 63rd Street North, east of Seneca) 468-83926, in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 6 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Mayans, (Schlapp absent).

ORDINANCE

an Ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by City of Wichita Code Section 28.04.210. (ZON 2002-73)

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 246

FAIRMONT ADD.

SUB2004-97-PLAT OF THE FAIRMONT THIRD ADDITION, LOCATED ON THE WEST SIDE OF 127TH STREET EAST AND NORTH OF 21ST STREET NORTH. (DISTRICT II)

Agenda Report No. 04-1191

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)

This unplatted site, consisting of 43 lots on 13.71 acres, is located with Wichita's city limits and is zoned MF-18, Multi-family Residential District.

Petitions, 100 percent, and a Certificate of Petitions have been submitted for sewer, water, paving, drainage and left-turn lane improvements. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street drainage and utility easements, a Restrictive Covenant was submitted that outlines restrictions for lot-owner use of these easements. Also, Restrictive Covenants were submitted to: a) provide four off-street parking spaces per dwelling unit on each lot that abuts a 58-foot street; and b) allow the creation of a homeowner's association to provide for the ownership and maintenance of the reserves.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within thirty (30) days.

The Certificate of Petitions and Restrictive Covenants will be recorded with the Register of Deeds.

Motion--
--carried

Mayans moved that the documents and plat be approved; the necessary signatures authorized and the Resolutions adopted. Motion carried 6 to 0, (Schlapp absent).

RESOLUTION NO. 04-647

Resolution of findings of advisability and Resolution authorizing construction of Water Distribution System Number 448-90027, the Fairmont Third Addition, in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 6 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Mayans, (Schlapp absent).

RESOLUTION NO. 04-648

Resolution of findings of advisability and Resolution authorizing construction of Water Distribution System Number 448-90028, the Fairmont Third Addition, in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 6 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Mayans, (Schlapp absent).

RESOLUTION NO. 04-649

Resolution of findings of advisability and Resolution authorizing construction of Lateral 4, Main10, Four Mile Creek Sewer, The Fairmont Third Addition, 468-83935) in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 6 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Mayans, (Schlapp absent).

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 247

RESOLUTION NO. 04-650

Resolution of findings of advisability and Resolution authorizing constructed pavement on North 127th Ct. East, from the east line of the Fairmont Third Addition, west to and including cul-de-sac, 472-84136, (west of 127th Street East, north of 21st Street) in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 6 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Mayans, (Schlapp absent).

RESOLUTION NO. 04-651

Resolution of findings of advisability and Resolution authorizing constructed pavement on Woodridge from the north line of the Fairmont Third Addition south to the north line of Lot 22, Block A; on Woodridge Circle from the north line of Lot 22, Block A, south to and including the cul-de-sac; and on Woodridge Ct. from the west line of Woodridge, south to and including the cul-de-sac, 472-84137, in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 6 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Mayans, (Schlapp absent).

RESOLUTION NO. 04-652

Resolution of findings of advisability and Resolution authorizing constructing left turn bay improvements on 127th Street East to serve North 127th Ct., East, 472-84138, in the City of Wichita, Kansas, pursuant to findings of advisability made by the Governing Body of the City of Wichita, Kansas, presented. Mayans moved that the Resolution be adopted. Motion carried 6 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Mayans, (Schlapp absent).

WATERWALK

WATERWALK REDEVELOPMENT PROJECT, MEMORANDUM OF AGREEMENT WITH STATE HISTORIC PRESERVATION OFFICE.

Agenda Report No. 04-1192

As part of the funding for the WaterWalk Redevelopment Project, the City submitted an application to the Economic Development Administration. As a result, an environmental review of the project area was conducted, which caused the City's Historic Preservation Office to submit an inventory of structures within the project area to the State Historic Preservation Office. The SHPO identified structures that are potentially eligible for listing in the National Register, and requested that a Section 106 Review be conducted.

The Section 106 Review evaluated the proposed project's impact upon the structures eligible for listing, and evaluated if there were any alternatives or options to the proposed project, and if not, were there ways to memorialize the structures and their historic context. A public hearing was held on April 5, 2004, to consider all options to avoid demolition or to minimize damage to the buildings. The City considered all options presented, and found no feasible method of incorporating the structures within the WaterWalk Redevelopment Project.

The City Council approved a Memorandum of Agreement on July 1, 2004, which was sent to the State Historic Preservation Office for their signature. The SHPO requested additional documentation to ensure that the City had complied with the Section 106 Review process. That process has been completed and adjustments were made to the MOA to more clearly reflect the agreement between the City and the SHPO regarding the steps that were taken to comply with Section 106 Review.

A consultant, meeting the Secretary of Interior's Preservation Planner Qualifications Standards, will need to be hired to implement the mitigation activities outlined in the Memorandum of Agreement. The cost to hire the consultant and to develop the mitigation products is provided in the current project budget.

CITY COUNCIL PROCEEDINGS

JOURNAL 182

December 7, 2004

PAGE 248

The revised Memorandum of Agreement has been drafted in accordance with stipulations set forth in 36 CFR 800 and has been approved as to form by the Law Department.

Motion--
--carried

Mayans moved that the Mayor be authorized to sign the Memorandum of Agreement. Motion carried 6 to 0, (Schlapp absent).

AIRPORT AGENDA

Motion--
--carried

Mayans moved that the Airport Consent Agenda be approved as presented. Motion carried 6 to 0, (Schlapp absent).

JABARA AIRPORT

PAYMENT OF CONDEMNATION AWARD (CASE NO. 03 CV 3655)-JABARA AIRPORT RUNWAY PROTECTION. (DISTRICT II)

Agenda Report No. 04-1193

The Airport Authority has identified the need to acquire a tract of land located north of the Jabara Airport runway in order to provide necessary runway protection as required by the FAA. This tract of land is owned by the City of Bel Aire. Earlier this year the City initiated eminent domain proceedings to acquire this property. On November 4, 2004, the court appointed appraisers filed their award. They determined the compensation to be paid for the acquisition of the property to be \$270,000.00. The court awarded the three appraisers fees in the amount of \$500.00 each. Court costs are \$111.

In order for the Airport Authority to acquire this property, it must pay the award, together with fees and costs, to the Clerk of the District Court on or before December 24, 2004.

The costs of acquiring these properties will be paid from Airport Authority project funds. A budget of \$280,000 is requested. This includes \$271,611 for the acquisition and \$8,389 for closing costs, environmental testing, survey and title insurance.

The Airport Authority has until December 24, 2004, to decide whether or not to acquire the property. If payment is not made to the Clerk by that date, the eminent domain is deemed abandoned.

Motion--
--carried

Mayans moved that the budget be approved; the bonding resolution be adopted and payment authorized to the Clerk of the District Court in the amount of \$271,611 for acquisition of property interests condemned in Case No. 03 CV 3655. Motion carried 6 to 0, (Schlapp absent).

RESOLUTION NO. A-04-011

A Resolution declaring that a public necessity exists for, and that the public safety, service and welfare will be advanced by the authorization of certain capital improvements to the Colonel James Jabara Airport Facility; and setting forth the nature of said improvements; the estimated costs thereof; and the manner of payment of same, presented. Mayans moved that the Petition be approved and the Resolution be adopted. Motion carried 6 to 0. Yeas: Brewer, Fearey, Gray, Lambke, Martz, Mayans, (Schlapp absent).

Motion--carried

Mayans moved that the Council Meeting be adjourned at 10:14 a.m. Motion carried 6 to 0, (Schlapp absent).

Adjournment

The City Council meeting adjourned at 10:14 a.m.

Karen Sublett
City Clerk